



**WESTERN RESOURCE
ADVOCATES**

M/047/0090
cc: Leslie
0010

September 9, 2009

Dana Dean
Associate Director of Mining
Division of Oil, Gas & Mining (DOGM)
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84116

RECEIVED

OCT 13 2009

Re: Conditional Approval PR Springs Mine M/047/0090
DOGM File Number or other Reference Number:

**ATTORNEY GENERAL
Natural Resources Division**

Ms. Dean:

This is to notify you that we are filing a Request for Agency Action pursuant to Utah Code Ann. § 63G-4-201, Utah Admin. Code r 647-5-104(1.12) and (2.13), and r 647-5-106, on behalf of both the Southern Utah Wilderness Alliance (SUWA) and the Utah Chapter of the Sierra Club challenging the Division's decision to approve the Notice of Intention to Commence Large Mining Operations for the PR Springs mine. We request an informal hearing before the Division Director on the issues below.

The following paragraphs represent the statements of relief sought from the Division along with the statements of facts and reasons forming the basis for the relief sought:

I. Air Quality Data and Analysis are Unavailable

Relief Sought

In its May 20, 2009 letter to Earth Energy, DOGM notes that the company is required to include air quality information, including the EPA air quality permit, in Appendix B. Appendix B currently contains no such information. DOGM must allow the public to review and comment on EPA's permit and conditions, as well as on the means by which Earth Energy intends to attempt to comply with those conditions. Until such time as it has provided this data and allowed sufficient time for the public to comment on this information, it would be inappropriate for the Division to give final approval to proceed with this permit.

Statement of Facts and Reasons Forming the Basis for Relief

Initially, it is inappropriate for DOGM to approve or otherwise allow construction or operation of mining operations to commence until the public has been given a meaningful opportunity to review and comment on the required air quality data, analysis and permitting associated with this project. As put forth in Earth Energy's Notice of Intention to Commence Large Mining Operations (NOI), the Environmental Protection Agency (EPA) has taken the lead on air permitting for this operation given its Tribal Land location (NOI at 50). As of the date of

UTAH • 150 South 600 East, Suite 2AB • Salt Lake City, UT 84102 • 801.487.9911 • Email: utah@westernresources.org

COLORADO • 2260 Baseline Road, Suite 200 • Boulder, CO 80302 • 303.444.1188 • Fax: 303.786.8054 • Email: info@westernresources.org

www.westernresourceadvocates.org

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availability of the file in the Division's Public Information Center, evidence of EPA's permit was not present. While Earth Energy notes that it "intends to comply with the conditions set forth by EPA," such a broad statement is insufficient.

In his April 21, 2008 letter to the Bureau of Land Management, the Director of Utah's Public Lands Policy Coordination office, John Harja, noted that the State is concerned over the regional cumulative impacts to air quality of tar sands projects. Letter from John Harja to the Bureau of Land Management (Apr. 21, 2008) at 2. He further noted that the National Ambient Air Quality Standard (NAAQS) for PM_{2.5} and Ozone are of concern to the State, especially in high elevation valleys such as the PR Springs area. *Id.* Given the increased importance of the impacts of energy development in the area of PR Springs, it is imperative that DOGM not give short shrift to the potential air quality impacts of this project.

II. Soil Erosion and Stormwater Runoff

Relief Sought

At a minimum, DOGM is required to ensure that the company has coordinated with the Division of Water Quality and has obtained a stormwater permit. To date, there is no evidence that such a permit has been issued. Further, DOGM must ensure that proper monitoring occurs related to the potential sediment load of runoff from the overburden/interburden storage piles, especially during a heavy precipitation event. As noted in the project's SWPPP, the overburden storage areas are outside of the pit and plant site containment areas, and sediments may be released onto undisturbed lands or waters of the State. SWPPP at 7.

Statement of Facts and Reasons Forming the Basis for Relief

This project promises to result in significant soil erosion and stormwater runoff. Yet, there is no Stormwater Discharge Permit in the file or referenced in the NOI. As a result, the public cannot comment in any way on possible provisions to protect surface waters. Moreover, because stormwater runoff will impact a stream designated as impaired, any Stormwater Discharge Permit must contain conditions sufficient to ensure that the discharge will not cause or contribute to a violation of state water quality standards or to ensure the impair water will come into compliance with these standards. 40 C.F.R. §§ 122.4(i); 122.44(d); 123.25. Therefore, because there is no permit and because there is no permit with terms and conditions sufficient to enable the water to return to meeting water quality standards, the project cannot proceed.

A number of activities associated with this mine will increased soil erosion due to ground disturbance. This erosion may subsequently have a significant impact on surface water quality in the affected area. With this type of mining activity, degradation of surface water quality is often caused by increased sediment load from waste piles, which are clearly present in this project. For instance, spent tar sands within waste piles could be sources of contamination for salts, metals and hydrocarbons for surface water.

Additionally, surface disturbance that may alter natural drainages can occur by both diverting and concentrating natural runoff, especially during construction and reclamation stages. These surface disturbances could become a non-point source of sediment to surface water bodies. Examples of sources of potential increased sediment flow during the construction operations are activities such as clearing of vegetation and stripping of overburden; stockpiling of topsoil and overburden; drilling and blasting; backfilling, grading and contouring; on and off road traffic; disposal of tailings, developing facilities; drainage construction; and land reclamation of access roads, spent tar sands and overburden/interburden storage areas and facility sites.

Further degradation of surface water quality could result from this project due to activities that contribute to soil erosion, such as removal and stockpiling of overburden material and topsoil. There is also no indication within the NOI or the Stormwater Pollution Prevention Plan (SWPPP) that erosion rates along rights-of-way or roads were considered. Drainage along roads may contribute to soil erosion as the surface runoff is channeled into these drainages.

The NOI notes that the project will result in 4.9 million cubic yards of excess material in the overburden/interburden storage areas, and that these storage areas fall outside of containment measures on the side slopes of Main Canyon. NOI at 14, 20. Thus, the disturbances for this project will affect the Main Canyon watershed. NOI at 35. Main Canyon generally flows west and northwest, entering Willow Creek west of the project area, and Willow Creek then flows into the Green River near Ouray. *Id.* Thus, the headwater drainages that will be filled by, and are prone to runoff from, the overburden/interburden storage areas flow ephemerally into Main Canyon. NOI at 35-36, SWPPP at 15. The importance of this potential source of sediment load is that Main Canyon is a tributary of Willow Creek which is listed as an impaired stream on Utah's 303(d) list for total dissolved solids. Earth Energy Groundwater Discharge Permit at 4.

The NOI states that runoff from the overburden/interburden storage areas will be controlled by facing the steepest portions of the slopes with coarse overburden material, placing armoring within the channel formed by the contact between the pile and the native slope, and by installing an energy dissipater at the toe of the pile. *Id.* at 37. The company claims that due to the size of the storage area materials, the waste piles will not produce significant amounts of sediment. *Id.*

However, the NOI also notes that the overburden/interburden storage areas inherently have a higher potential risk of slope stability issues. NOI at 46. While the NOI states that these areas will be designed to be stable during normal conditions, and that the use of flatter-than-needed grades should eliminate the risk of runoff, the company offers no proof of these assertions. NOI at 20-21. Regardless of this claim, the overburden/interburden storage area No. 1 will be constructed at a 40 percent slope and will be susceptible to considerable runoff danger. *Id.* Even assuming the truth of this assertion, the flattened grades will not be in place until the reclamation phase of the project. During the operational phase, the NOI states that the average slope will be 1.5:1, or 66 percent, much steeper than the proposed final grade of the piles. (NOI at 47). Such steep grades will be especially prone to erosion during high precipitation events.

Because the overburden piles have no secondary containment measures, this condition poses a high risk of adding to the sediment load of Willow Creek

Further, during reclamation, the replacement of stockpiled topsoil and the establishment of stabilizing vegetation will require a substantial amount of time and these areas may be a source of erodible material depending on the slope and weather conditions. Because of this, the company must be required to install secondary containment measures until reclamation is complete. Such measures could include requiring the planting of mature vegetation on the edges of ephemeral washes to help prevent the transport of disturbed soil into Main Canyon.

While the company makes the assertion that only minor amounts of runoff will be generated on the outslope faces of the storage areas, it offers no basis for this assertion. NOI at 48. It offers as proof the alleged success of the use of their proposed overburden/interburden storage areas design in their 2005 product test pit. However, the success of this design has not been verified by monitoring data or independent sources and, further, the company offers no proof that the potential success of such a design on a small 5-acre test site will transfer without failure to a 213-acre industrial site housing 70 acres of overburden/interburden.

III. Process Chemical

Relief Sought

Given the potential expansion of the use of the process chemical should this project prove successful, further, independent analysis of this substance must be performed in order to ensure the public of the statement by Earth Energy that this chemical will not harm the environment.¹

Statement of Facts and Reasons Forming the Basis for Relief

Regarding the "process chemical" used in the refinement process, SWPPP at 9, although we respect the requirement to protect proprietary processes and information, DOGM is asking the public to accept at face value the assertion that the process chemical used by Earth Energy is non-toxic and, while present in tailings, will be "clean (inert), 'damp-dry' sand," SWPPP at 1, that will have a de minimis effect on stormwater runoff. This assertion has been made in spite of the fact that the company admits that the chemical's biodegradability has not yet been determined. NOI at 17. DWQ's review of this chemical was strictly in the context of ground water contamination and does not adequately address possible contamination of surface water. See letter from Rob Herbert March 4, 2008 to Earth Energy Resources (Mar. 4, 2008).

¹ The same analysis must be applied to the potential air quality impacts of this process and the use of this chemical. As with surface water impacts, there is no evidence in the file to support contentions that project will not result in air emissions.

IV. Drainage Design

Relief Sought

DOGM must require that the company uses 25 or 100 year standards in the design and construction of the facility drainage system.

Statement of Facts and Reasons Forming the Basis for Relief

Regarding the facility drainage design, the SWPPP notes that the ditches are designed for a 10-year, 6-hour precipitation event. SWPPP at 5. The use of a 10-year standard for the design of these ditches is insufficient. This area is prone to significant summer storms, and the potential consequences of a stormwater runoff into the Willow Creek drainage will likely further impair this water body.

V. Reclamation Efforts

Relief Sought

DOGM must require sufficient assurances from the mining company that reclamation efforts will be successful prior to allowing the project to go forward.

Statement of Facts and Reasons Forming the Basis for Relief

The NOI notes that the company intends to use fast growing cover grass will be used during the reclamation process. The NOI fails, however, to address issues such as the moisture needs to ensure germination of the seeds. Further, the NOI also fails to address potential erosion issues on sloped areas prior to seed germination. What measures will be taken to prevent erosion prior to establishment of the maturation of the stabilization vegetation? The NOI indicates that the company will not mulch the reseeded area, thus ensuring stability of sloped areas during the germination process.

VI. Pit Compaction/Subsidence

Relief Sought

DOGM must ensure that the company monitors for subsidence after the reclamation phase of the project and must require the company to bond for this contingency.

Statement of Facts and Reasons Forming the Basis for Relief

The NOI fails to address the issue of possible subsidence within the perimeter of the pit area subsequent to refilling the pit with used tailings. Because the company claims that it will backfill the pits to 60-65% of their original volume, but makes no assertion that it will take

measure to ensure proper compaction of this material during the backfilling process, what measures are the company taking to prevent future subsidence of the pit area over time?

Additionally, please be aware that we have had continuous contact with Mike George at the Division of Water Quality (DWQ) and Mr. George has not yet made a determination whether or not a UPDES permit for the PR Springs Mine will be required. Mr. George indicated that he would need to make a site visit prior to making that determination and that he intended to make such a visit in mid-October. Because Mr. George has not yet made his decision, it would be inappropriate for DOGM to allow commencement of operations to begin until DWQ issues a final ruling on the UPDES permit process and we have had a chance to review, comment and possibly challenge that permit.

If you have any questions on this matter, please feel free to call me at 801.487.9911

Yours,

A handwritten signature in black ink, appearing to read "Rob Dubuc", with a stylized, cursive script.

Rob Dubuc
Attorney for SUWA
and Sierra Club

CERTIFICATE OF MAILING

I hereby certify that on October 9, 2009, I served a true and correct copy of the foregoing **Request for Agency Action** on the following by first-class mail:

Steve Alder
Assistant Utah Attorney General
1596 West North Temple, # 300
Salt Lake City, UT 84116

Barclay Cuthbert
Earth Energy Resources
404-6th Avenue Southwest
Calgary, Alberta Canada T2P 0R9

Dated October 9, 2009.



Rob Dubuc
Western Resource Advocates
Attorney for SUWA and Sierra Club